

Do unions and worker representation bodies make for more or less inequality?

Introduction

According to the conventional wisdom, trade unions (and worker representation institutions) are inherently opposed to equality insofar as unions seek benefits for their members alone, thus placing non-unionised workers at a disadvantage and contributing to greater inequality within the working class (the insider-outsider theory; Lindbeck and Snower 1989, 2002; Doiron 1995). This chapter – challenging these stereotypes, in line with the literature showing that trade unions in fact contribute to a *better* income distribution, and thus to a more equitable and socially sustainable integration (Hayter 2002; Hayter and Weinberg 2011) – sets out to conduct a critical discussion of this complex issue. As different forms of inequality rise in Europe to an unprecedented extent, even in traditionally low-inequality countries (OECD 2011a: 22), it is clear that this adverse situation must be fought using a range of tools, at all levels and by all actors. While trade unions, via collective bargaining, participate in ensuring fairer pay (see Chapter 4), they have a role to play in other aspects also, since inequality is not one-dimensional, i.e. solely earnings-based. The mapping of European Social Dialogue (ESD) agreements demonstrates that, insofar as it influences legislative framework conditions through the channels of national and European social dialogue, trade union involvement in fighting inequality encompasses the workforce as a whole. The trade unions' positive contribution notwithstanding, their role in pursuit of more equal societies (Hayter 2002) is being gradually undermined. The downplaying of trade union and worker representation institutions in policy-making appears on the European (less competences under the Europe 2020 Strategy as compared to the Lisbon Strategy, see ETUC and ETUI 2011: 84 ff.) as well as on the national level (see collective labour law reforms section).

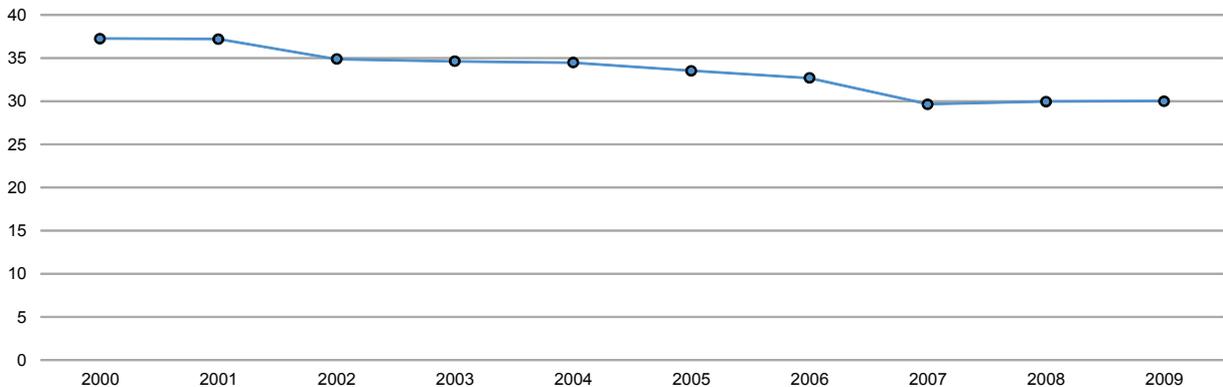
At the same time inequality is a matter also for workers' representatives on the company level. While the devising of pay policies remains the preserve of corporate managers, to address areas such as gender- or ethnicity-based inequalities does lie within workers' reach. They rise to this challenge via instruments both traditional – European and SE Works Councils – and new, for example, International Company Agreements. Yet these efforts fall far short of what is needed and are further obstructed by incoherent implementation of the information and consultation *acquis*.

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Trade unions and inequality

Figure 8.1 Trade union density in EU27 (simple average), 2000-2009



Source: Visser (2011).

Fighting inequality: a quintessential trade union task

Equity and equality issues being an essential dimension of employment relations (Strachan et al. 2011), unions have, in the course of their history, gradually learned – admittedly not without encountering difficulties, even still today, within their own ranks – how to tackle instances of inequality and discrimination. The discrimination in question, often based on ethnicity or gender, frequently combines with other forms of inequality more directly linked to the labour market, such as differences in education, experience and skills. At the European level, national unions and the ETUC have had a role to play in regulating ‘non-standard’ forms of employment (part-time work (1997) and fixed-time work (1999) and leave schemes (parental leave (1996, 2009)) via directives and frameworks of actions on the life-long development of competencies and qualifications (2002) and gender equality (2005), as well as, most recently, the framework agreement on the inclusive

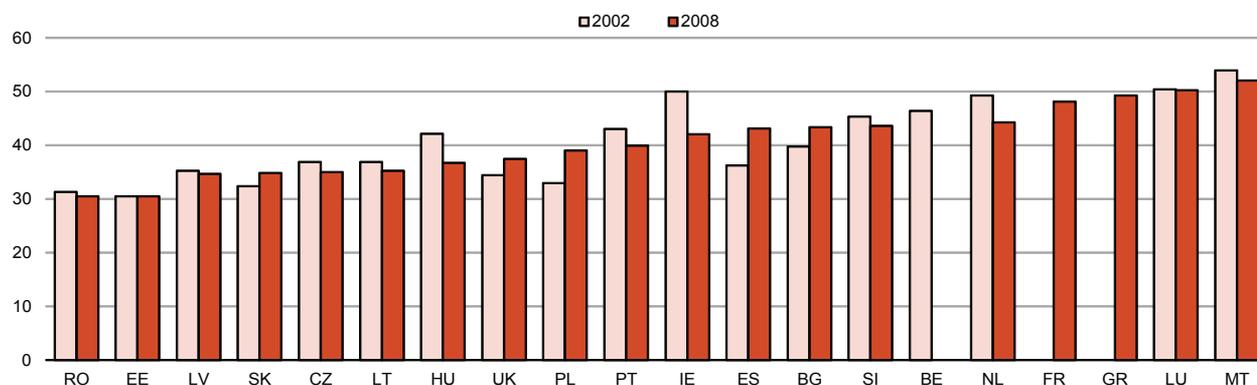
labour market (2010). Trade unions have always also naturally sought to combat or mitigate forms of inequality stemming directly from the labour market, particularly in terms of wage inequality, by standardising pay and working conditions, mainly via collective bargaining and the effort to influence legislation. Alongside legalisation, benefits resulting from sectoral collective agreements generally, in the EU, affect both unionised and non-unionised workers since such collective agreements are, in most countries, binding upon all employers in a certain sector.

However, in the standard (and neoliberal) economic view, very often based on the prevalent model of business unionism in the English-speaking world (which turns a blind eye to any other, broader form of trade unionism), there has never been any real belief that trade unions have contributed to a more equal distribution of wages. On the contrary, there is an obstinate conviction that unions are extorting monopoly rents in the form of higher wages from non-unionised workers, which increases wage inequality between unionised and non-unionised workers and generates allocative inefficiencies, i.e. a reduction of employment and a lowering of labour market efficiency (cf. Friedman 1962). The current, less ‘encompassing’ membership composition of most

Figure 8.1). Today, various unions have a strong membership concentration in their traditional sectors of unionization, i.e. manufacturing industry and, particularly, the public sector (Scheuer 2011), which is associated with the so-called ‘insiders’, in contrast with the so-called labour market ‘outsiders’ (Lindbeck and Snower 2002). A considerable number of these ‘outsiders’ are workers employed on ‘non-standard’ contracts, often entailing the danger of precariousness (or vulnerability), and who, in spite of the often repeated claim that they strongly need union representation to improve their wage and working conditions, are in actual fact less likely to belong to trade unions (Vandaele and Leschke 2010). Alongside the fact that they are likely to be employed in small workplaces, several other reasons account for the underrepresentation of lower-paid workers, including the fact that they probably face stronger liquidity constraints and might well be disillusioned with trade unions given the unions’ low bargaining capacity in the low-paid sectors and, hence, lesser ability to improve wage and working conditions (Checchi et al. 2010).

Trade unions and inequality

Figure 8.2 Monthly minimum wage as % of average monthly earnings in industry and services, 2002-2008*



*EE, SK 2008=2006, FR, NL 2008=2007
Source: Eurostat (2011k).

Rising inequality: a threat to unions

Despite accusations that the trade unions exploit their ‘insider power’, numerous empirical studies have, over time and across advanced capitalist countries, repeatedly found that unions have an equalising effect and thus reduce overall wage inequality (for an overview, see e.g. Baccaro 2008; Hayter and Weinberg 2011). Although the empirical findings are robust, some reservations should be made. First of all, countries of Central and Eastern Europe are seldom included in the research, most of which focuses predominantly on the English-speaking world and, to a lesser extent, Western Europe. Secondly, the distributional impact of unions on gender pay differences is less pronounced, despite their efforts to combat this form of discrimination (Card et al. 2007). Thirdly, wage compression is achieved in different ways, substantially depending on the bargaining framework (Wallerstein 1999): whereas, in countries with low collective bargaining coverage, the local union influence and union coverage is important, union membership becomes less relevant in countries with high collective bargaining coverage since

collective agreements are administratively extended beyond the union-organised sector (Visser and Checchi 2009).

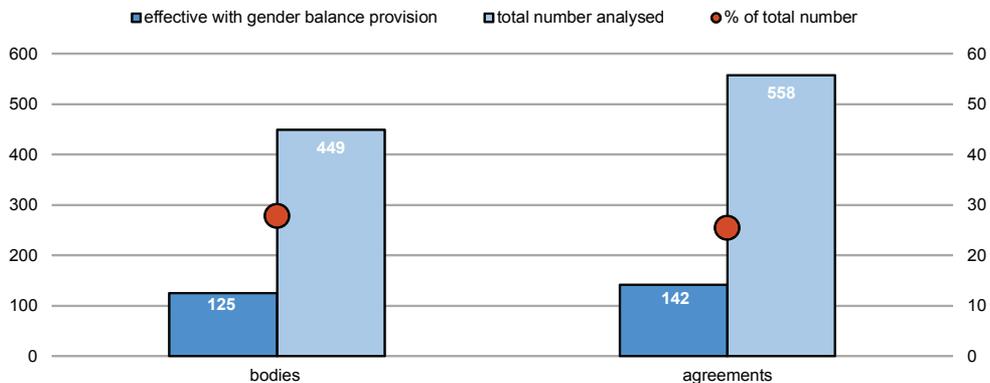
Where country differences are concerned, countries with high collective bargaining coverage tend to have a greater degree of wage compression since pay differences between companies and economic sectors can be reduced by extending collective agreements to non-unionised workers (see Chapter 4). In addition, minimum wage legislation (see Figure 8.2 for data) also contributes to limiting wage inequality at the bottom of the earnings distribution (OECD 2011a: 120). Yet unions, while observing intra-country changes over time, have been unable to prevent the increasing variance in wages, indicating that labour market institutions have become less effective in compressing wage distribution. The general trend towards wage inequality is especially pronounced in the countries of Central and Eastern Europe (Baccaro 2008) and in countries with limited union or collective bargaining coverage.

What is more, the increasing wage inequality might have, in combination with the current union membership composition, itself contributed to a further de-unionisation (Checchi et al. 2010). Given the fact that unions primarily represent workers in the middle of the earnings distribution – hence the underrepresentation of low and high earnings in the unions – a further rise

in earnings inequality might entail a further fall in union membership since low-paid workers might perceive union action as increasingly ineffective and highly paid workers might be less inclined to unionise or to retain their union membership since they might well be less in sympathy with the egalitarian policies of unions. Nevertheless, in reaction to the membership decrease and the underrepresentation of low-paid workers, unions have become once again more aware of the need to actively ‘organise the unorganised’, i.e. those groups of workers not directly represented by unions (Pedersini 2010), although incentives to this end depend on employer and state strategies, the institutional context for collective bargaining and, last but not least, unions’ own structures, cultures, traditions and strategic action (Frege and Kelly 2003). In other words, organising the unorganised is a preliminary but important step to regaining more encompassing unions and obtaining greater leverage whereby to tackle inequality.

Inequality and worker representation

Figure 8.3 EWCs and SE works councils competent to deal with aspects of inequality (number of agreements)



Source: European Trade Union Institute, EWC database, February 2012.

Equality issues too rarely on the agenda, too rarely applied in practice

Though inequality on the company level can manifest itself in many forms, it seems that the efforts of transnational workers' representative bodies have so far been predominantly focused on gender inequalities and equal opportunities for women and men (the ETUI database of EWCs contains info on this aspect alone). This is in line with the philosophy and goals of the Europe 2020 strategy in which 'gender equality continues to be a core element (...), because equality between women and men has proven to be a sustainable solution to old and new challenges' (European Commission 2010e: 7).

In this regard 130 EWC and SE agreements (i.e. 23% of the total of 558 agreements analysed) officially recognise the right of the EWC to deal with equal opportunities issues (Figure 8.3). The importance of equality for employees was reported to be even greater in a survey conducted in 2005 (Waddington 2005) when 44.5% of EWC member respondents stated that the agreement under which

they operated included provisions on this topic. It must be stressed that these figures reflect only the formal contractual recognition of such a competence on the part of the European workers' representatives, whereas inequality might well be an item appearing on the agenda of a greater number of EWCs based on the evolution of information and consultation practices in the light of a tacit understanding with the management.

Since EWCs are information and consultation bodies that arguably are not entitled to conduct collective bargaining, hard-core issues relating to the pay gap between men and women would seem to be beyond their reach (even though at least 20 out of the 577 in fact do have this competence). There are, however, other aspects of inequality between the sexes that can be dealt with by workers' representatives in EWCs. These aspects cover issues such as facilities for combining work and family life, extending women's participation in decision-making bodies (see European Commission 2010e: 49-50) and providing equal opportunities for career and professional development. These issues have been the subject of 7 transnational company agreements co-signed by EWCs and collected in the European Commission's Database (European Commission 2011f).

Much progress remains to be achieved also with regard to gender balance in the composition of EWCs. Though

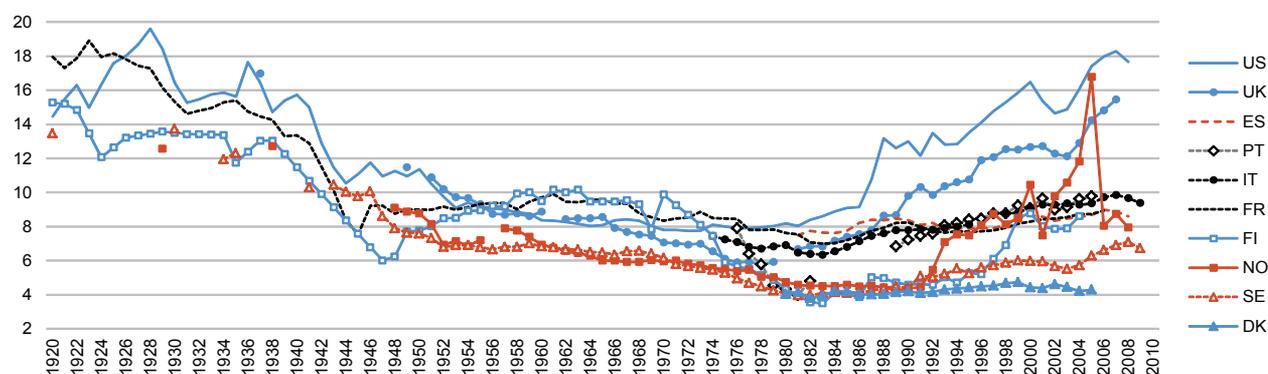
no official data on the men-to-women ratio in EWCs is available, it is reportedly a predominantly male environment (Monaco and Sechi 2007). Jeremy Waddington's 2005 survey was conducted on a sample of EWC members consisting of 84% men and only 16% women, indicating the existence of a strong imbalance in EWC composition. Furthermore, only 25 of the 577 EWC agreements so far analysed include provisions classified as favourable to supporting a gender balance among men and women. However, according to the aforementioned survey, at least 21% of EWC members express a willingness to undergo more training on gender equality issues.

Overall, it can be concluded that neither do the EWCs commonly deal with gender equality issues nor are they combating to a sufficient degree the inequality that exists within their own ranks. Gender imbalance, as an important aspect of inequality, does not seem to represent a top priority on EWC and SE works council agendas. There would thus seem to be a significant need for both training and awareness-raising as well as for promoting women candidates in EWC and SE elections.

It remains to be seen whether, after implementation of the new recast directive 2009/38/EC, improvement will take place in the situation with regard to the above-mentioned issues (as well as to the consistent implementation of EWC rights across the EU; see below in this chapter).

Worker participation and corporate governance

Figure 8.4 Income share of top 1%



Source: Vitols's own calculations from 'The World Top Incomes Database' (<http://g-mond.parisschoolofeconomics.eu/topincomes/>)

Worker participation can help reduce income inequality by moderating demands at the 'top' end

A key factor in explaining rising inequality is the increasing share of income and wealth claimed by the few persons at the top of the income distribution. This trend has been especially strong in the English-speaking countries, for example in the US and UK where the share of income accounted for by the top 1% of the population has more than doubled since the mid-1970s (OECD 2011b).

A major contributory factor in this respect is the massive increase in the remuneration received by the top managers of the largest companies. Corporate governance policies have increasingly oriented management remuneration to the stock market, thereby unhitching management pay from the norms applicable to the rest of the workforce. The

crisis would appear to have had no more than a temporary effect in slowing these increases for, after a pause in 2008, the median total compensation of chief executive officers (CEOs) at the largest 50 European listed companies increased in both 2009 and 2010 by between 3 and 4 per cent (Vitols forthcoming).

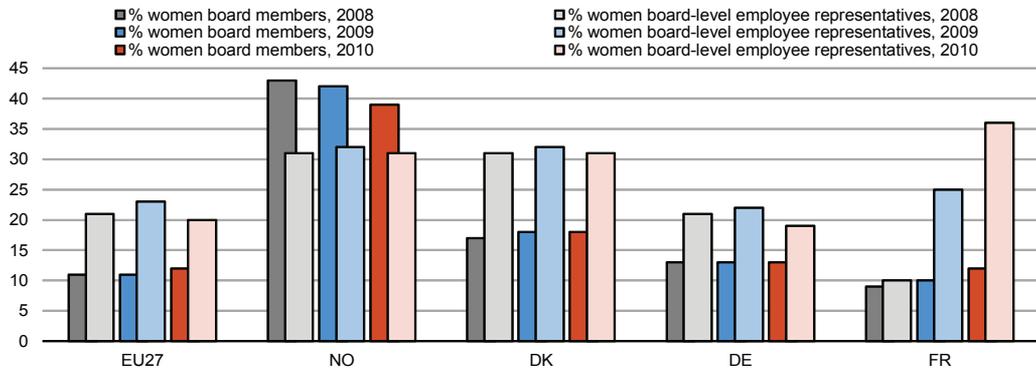
Research shows that a number of institutions and policies can help moderate the upward spiral of remuneration (van Essen et al. 2012). One relevant practice here is the inclusion of employee representatives on company boards. Since these boards are, as a rule, responsible for determining remuneration policies for the top-management level, employee representatives have a potential voice regarding executive pay. On the whole, companies with board-level employee representation pay their CEO less, and also use less stock-based compensation, than companies of similar size and type of activity that lack such representation. Other factors that can moderate remuneration are two-tiered boards and the presence of a large shareholder (Vitols 2010).

Although additional factors such as taxation policies also play a role, it is striking that the top 1% share in incomes is lowest in countries with strong worker participation rights. The analysis in this respect is based on all European countries for which detailed historical data on income distribution is available through

the World Top Incomes Database (<http://g-mond.parisschoolofeconomics.eu/topincomes/>). Using the ETUI's European Participation Index (EPI available at <http://worker-participation.eu/About-WP/European-Participation-Index-EPI>), it is possible to show that the share of income taken by the highest earners is lower in countries scoring high on this index (i.e. with strong worker participation rights in company boards, at the establishment level, and through collective bargaining). According to the EPI, Denmark, Sweden, Norway and Finland have particularly high EPI scores – and these same countries also have the lowest income shares for the top 1%. Countries scoring lower on the EPI (France, Italy, Portugal, Spain and the UK) had much higher shares going to the top 1%. While no causal relationship can be proven, it does seem that there is a link between worker involvement and managerial pay levels. Such analysis indicates that worker representation can influence the distribution of income at not only the bottom but also the top of the earnings ladder. As such, the strengthening of worker participation could have a beneficial 'sandwich' effect in reducing income inequality by compressing both ends of the distribution.

Worker participation and corporate governance

Figure 8.5 Women representation on boards



Data source: European Commission database on women and men in decision-making (February 2012).

Worker participation: a way to gender equality and balanced boards

Better corporate governance helps to enhance companies' competitiveness and sustainability in view of achieving Europe 2020 growth targets (European Commission 2011c). In particular, more diverse and gender-balanced boardrooms are acknowledged as a remedy for poor, short-term and risk-oriented decision-making. Contribution of board-level employee representatives [BLEReps] to such diversity has so far been disregarded, despite its significant input in terms of both gender equality and mix of appropriate skills and outlooks.

European initiatives aimed at increasing female participation in boardrooms have recently flourished, inspired by the rise in national binding gender quotas for female directors which followed the Norwegian precedent (e.g. in France, Belgium, Italy and the Netherlands last year, Visser 2011). The European Parliament adopted a resolution upholding

Commissioner Viviane Reding's call for 'Women on the board pledge for Europe' which invites listed companies to voluntarily commit to achieving the level of 30% of women board members by 2015 and of 40% by 2020. The EP resolution further specified that binding regulation has to be proposed by the Commission if no significant progress is assessed (European Parliament 2011). The Commission plans to conduct this assessment in March 2012 (European Commission 2011b). It is expected to be negative, given that, according to the Commission's database, only 12% of board members in the EU27 in 2010 were women. Figure 8.5 shows that introduction of quotas had a significant impact on feminisation of boards in listed companies (Norway), while women in countries without quota legislation in 2010 (Germany, France) or legislation restricted to the sole public sector (Denmark) made no significant progress in this respect. Above all, Figure 8.5 demonstrates that the feminisation of BLEReps is, with the exception of Norway, much higher than feminisation of the board member population overall. Although this data must be considered with caution as they lack representativeness (being limited to the 588 largest European listed companies in 2010 which include, e.g. only 30 German companies), they reveal a trend that is irrefutable. Actual figures are indeed likely to be much higher, as 31% of European BLEReps were said to be

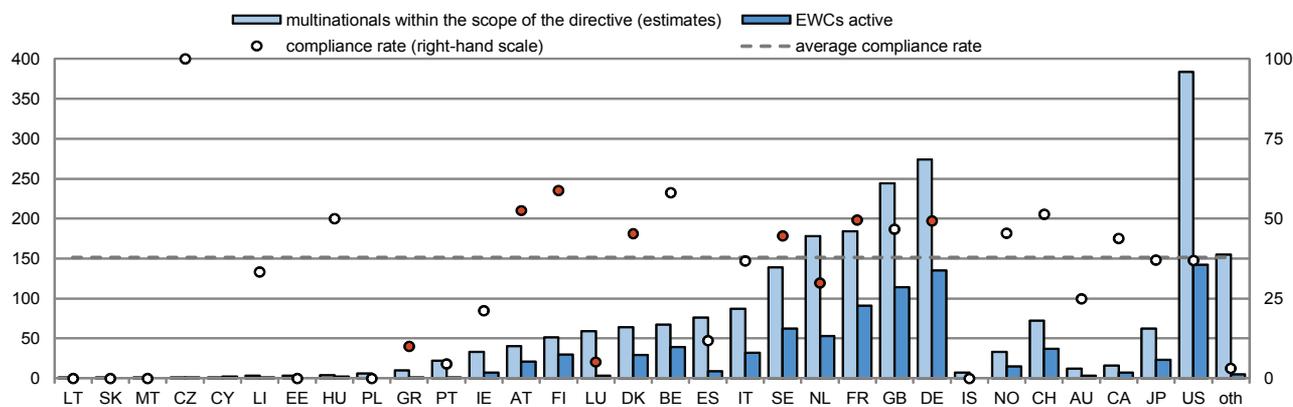
women in 2008 (European Professional Women's Network 2008: 21), and 21.6% of French BLEReps were women in 2007 (Conchon 2009: 109). Without BLEReps, the presence of women on boards would be drastically lower as 73% of female directors are BLEReps in Germany, 55% in Denmark and 50% in Austria (Heidrick & Struggles 2011: 40).

BLEReps contribute to board diversity not only through greater gender equality but also thanks to their specific skills and profiles, insofar as 'diversified expertise is considered the key to efficient board work' (European Commission 2011c: 6). They enrich board decision-making with their in-depth knowledge of the company's organisation, processes and occupations, and help foster a long-term development by taking care of the overarching company interest in both its social and economic dimensions (Conchon and Waddington 2011).

Gender equality and BLEReps should not be viewed as a mere instrument to better company performance, not least because the correlation is still unclear as to both women (Huse et al. 2009: 582) and employee board-level representation (Conchon 2011: 17). Both are basic democratic principles as anchored in the EU Charter of fundamental rights and deserve respect per se, in the interest of an equal society.

Inequality and the legal framework for worker involvement

Figure 8.6 Multinational companies covered by the EWC directive and rate of compliance per country



oth: other countries: AE, BH, HK, IL, IN, KR, KW, KZ, MX, MY, NZ, RU, SG, TR, TW, ZA.

Source: Jagodzinski and Pas 2010. Data source: European Trade Union Institute (2011a), EWC database, April 2010.

Are fundamental worker participation rights conditional?

The question of inequality with regard to employee representation runs deeper than the mere matter of the representatives' competence to deal with instances of inequality. The issue at stake is whether it is fair to uphold a fundamental right to transnational information and consultation *only* in European-scale undertakings of a particular size (1000 employees in EEA) as measured by workforce (Directives 94/45/EC and 2009/38/EC). Furthermore, the application of these rights is to some extent voluntary (e.g. the EWC directive), in other words, dependent upon the parties' will or strength to drive for a representation body. Consequently, it is estimated that in only 38% of companies eligible to set up an EWC has such a representation structure actually been established (Figure 8.6) Jagodzinski and Pas 2011; ETUI database of EWCs, ewcdb.eu). While it is obvious that social dialogue cannot be imposed on parties uninterested in it, excessively flexible provisions based

on the existence of lax default solutions result in an even smaller scope of application of the fundamental rights.

An additional problem is the existence of often substantial divergences of quality implementation on the national level. In the view of the European Commission (2000), such differences are necessary to accommodate varying traditions in national systems of industrial relations; in fact, however, if the national implementation acts are intended to transpose fundamental rights and guarantees, then the content of these rights (e.g. EWC competences, resources available to employee representatives) and guarantees (access to courts, sanctions for infringement) should be at least aligned and made compatible across the Member States, if not actually uniform so as to offer common standards. Currently this is far from being the case with, for instance, sanctions that range between a minimum equivalent to 7 euros in Poland and a maximum of 100 000 GBP in the UK (Jagodzinski forthcoming). Such levels of inequality in legal base for laws that should be universal can lead to regime shopping, i.e. actions deliberately aimed at exploiting inequalities in the law and thus further reinforcing the inherent inequality in access to fundamental rights, hence giving rise to social dumping (e.g. the practice of establishing shelf SEs in the Czech Republic without any requirement that they have a workforce or business activity).

These fundamental questions raise great challenges for both policy- and law-makers, as well as for trade unions. The former are challenged to reconsider the appropriateness of the legislative instruments used for realisation of the fundamental right to information and consultation; the latter, if thresholds and rules for setting up transnational information and consultation bodies were to be changed, would be confronted with the need to support and coordinate the establishment of many more workers' representation bodies than is currently the case. The various existing constraints on both these groups of actors should not, however, be invoked to sustain forever the status quo and the inequalities stemming from it.

Inequality and the legal framework for worker involvement

Equal access to information and consultation in the member states?

Directive 2002/14/EC was passed in the EU to enable workers at the national level to defend their jobs through an effective, standing and regular procedure for information and consultation on recent and probable developments in the activities of an undertaking, on its financial and economic situation, on the evolution of employment and, in particular, on any decision likely to entail major changes in the organisation of labour. However, the minimalistic implementation measures in the member states generate serious inequality among workers in the EU in terms of their ability to exercise their rights to information and consultation.

Interestingly, the financial and economic crisis did not reveal formerly 'hidden problems' in respect of the implementation of Directive 2002/14/EC. Rather, it shed new light on already existing and well-known problems that can be grouped under four headings:

- 1) incorrect implementation;
- 2) avoidance of the Directive's provisions;
- 3) uncertainty about key definitions and concepts;
- 4) enforcement difficulties.

Indeed, the quality of domestic implementation measures remains weak, in particular in respect of the timing and content of the information delivered and the consultation carried out, which are usually not compatible with any view to 'reaching an agreement', insofar as, in most cases, managerial decisions have been already taken when the procedure for information and consultation of the workers is launched.

Implementation gaps have been identified concerning practical arrangements, while loopholes have been revealed also with regard to the protection of workers' representatives exercising their rights.

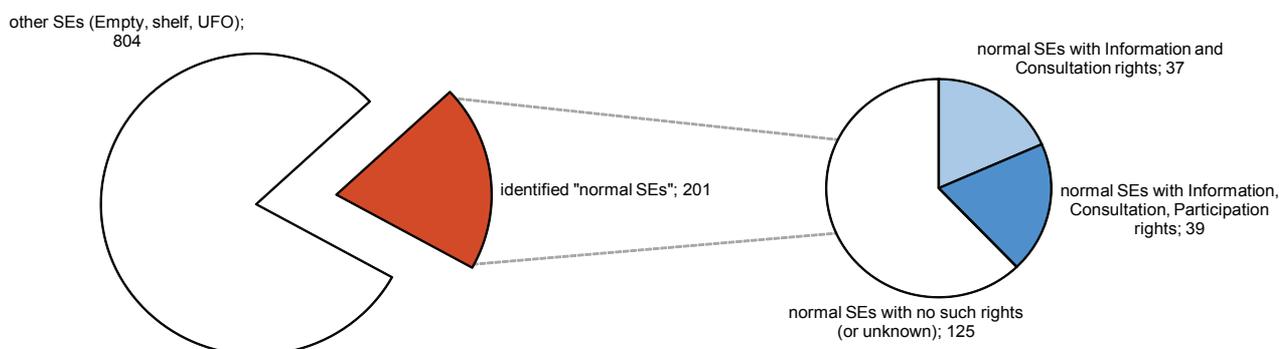
Furthermore, in some EU member states, the limited coverage of the collective agreements transposing the Directive signifies non-application of the provisions by those employers not bound by a collective agreement. By the same token, the question arises of whether the principle of freedom of association is respected when employees fall under the provisions even though they are not trade union members – for there are indeed cases where collective agreements deviate from statutory provisions to the detriment of workers. The scope of application of the provisions on information and consultation in respect of the threshold is also open to question insofar as it may entail exclusion of whole categories of workers, such as fixed-term employees, or lead to instances of artificially splitting undertakings so as to avoid meeting the threshold for application of statutory and/or collectively agreed provisions. Furthermore, the lack of the necessary institutional framework and a deficient 'culture' of social dialogue give rise to difficulties in defining which category of representatives – namely, trade unions or workers' representatives, in particular in countries with a dual channel of representation – should enjoy information and consultation rights. Additionally, a trigger mechanism (the explicit demand by a certain percentage of the workforce), which is not foreseen by the directive 2002/14/EC, has been introduced in certain member states, preventing the right to information and consultation from being automatic and placing additional constraints on its exercise. There exist doubts, what is more, as to whether certain domestic provisions on confidentiality are in conformity with the Directive. Enforcement is still an issue, as the right of information and consultation is sometimes perceived as an individual right, while enforcement mechanisms appear not to offer the appropriate protection to workers.

Clearly, the domestic implementation measures of the general framework for informing and consulting employees – as laid down in the European Framework Directive – are not such as to guarantee adequate exercise of this fundamental right by the workers and their

representatives and lead, what is more, to unacceptable forms of inequality among workers in the EU. Such inequality stems from abuse by the member states of the principle of subsidiarity which allows them a great deal of room for manoeuvre in transposing EU directives.

Inequality and the legal framework for worker involvement

Figure 8.7 Worker involvement in the European Company (SE)



Data source: ETUI (2011b).

Equal access to European information, consultation and participation rights must be ensured

The right to information and consultation at the workplace represents a basic right enshrined in the EU Charter of Fundamental Rights. Numerous EU Directives refer and give concrete substance to this fundamental right. Directive 2001/86/EC on worker involvement in the European Company (Societas Europaea, SE) is of particular relevance in this respect, for it lays down a specific procedure to ensure that transnational information and consultation rights – and where applicable also participation rights at board level – are guaranteed in this genuinely European form of corporate entity.

In order to ensure equal access to these rights, proper implementation of the Directive is essential. The SE Directive clearly provides that no SE may be set up unless a so-called special negotiating body has also been set up to negotiate

with the management on the future mechanisms for worker involvement in the SE. However, the current practice of SE founding gives rise to serious concerns and doubts in this respect.

In fact, some 70% of the 1005 SEs registered by December 2011 have been set up by way of a subsidiary (ETUI, 2011b). Such SEs start out, by their very nature, with zero employees. As the SE Directive regulates the initial founding situation only, there is no guarantee that the SE – once it starts to have employees – will 'remedy' the situation by holding negotiations on information, consultation and participation.

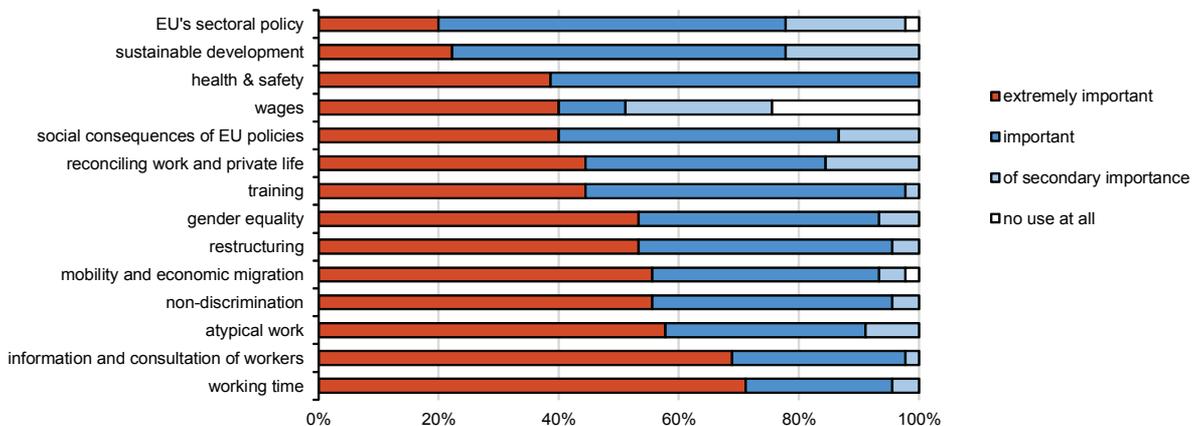
Moreover, we are witnessing today a widespread practice of setting up shell SEs, usually for subsequent sale to interested customers (Stollt and Kluge 2011). In the absence of a European registry, the ETUI, via its SEEurope project, has so far identified 201 SEs as being 'normal SEs' in the sense that they have *both* business activities *and* employees. In fact, only 76 of these are known to have implemented transnational information and consultation rights and 39 have, additionally, negotiated the right to representation on the SE's supervisory or administrative board (i.e. participation). This low figure points to serious deficits in the implementation of worker involvement in the SE, a situation all the more worrying in that the total number of SEs is already above 1000 (see Figure 8.7).

Likewise, the SE enables companies to de facto 'freeze' their current status with regard to the (non-) existence of participation rights. In most countries where national participation rights exist, employee thresholds for their introduction and/or scope can be found (Conchon 2011). The above-mentioned loophole in the construction of the SE legislation – regulating employee involvement for the initial founding phase only – has led to a situation in which national rights are threatened. Many SEs will 'grow' over time. If there were no participation rights in the beginning (because the national threshold was not yet reached) there probably never will be any such rights in the SE even if the workforce size subsequently comes to exceed the common national threshold. As a consequence, employees of such SEs suffer structural discrimination in comparison with colleagues working in a company based on national law.

The SE legislation is currently undergoing a review process (Cremers 2011). It remains to be seen whether a revised Directive will be adopted and whether it will address the chronic problems that have been not only highlighted by the ETUC (ETUC 2011) but also acknowledged by the Commission itself (European Commission 2008b, and 2011e). Worker involvement is certainly not a simple add-on or a burden to companies (ETUC and ETUI 2011) – it is a fundamental right to which equal access of workers must be ensured.

Inequality and European Social Dialogue

Figure 8.8 What do you think are the most important subjects to be dealt with within the framework of the ESD?



Source: ETUC-OSE (2011), p.77.

National and European deregulatory trends undermine European Social Dialogue *acquis*

Since the start of the European social dialogue at both interprofessional and sectoral level, the fight against inequality and discrimination in the broadest sense has indeed been a key issue tackled by the respective European social partners as is clearly indicated by a recent study, conducted by the European Social Observatory for the ETUC, that reflects on the state of play and prospects of the European social dialogue (see Figure 8.8). Of the 59 documents concluded within the European interprofessional social dialogue between 1985 and 2010 (excluding so-called follow-up reports), 8 dealt with issues such as gender equality (3), disability (3), racism (1) and youth (1). Quantitatively speaking, this seems somewhat meagre, but the figures are also misleading for the following reasons. Firstly, by adding the so-called follow-up

reports, the total would be increased by 10; secondly, one should also add the directives/(autonomous) agreements on fixed-term work, part-time work, telework and on inclusive labour markets which, though 'catalogued' under the heading 'working conditions' and 'employment', all have ensuring equality and preventing discrimination as one of their major concerns; and thirdly, one major attempt to negotiate a Directive/agreement on temporary agency workers failed, with equality protection having been one of the major stumbling blocks. Finally, it could also be argued that out of 7 Directive/(autonomous) agreements and 2 framework of actions, or i.e. the most important instruments of the European social dialogue from the standpoint of their binding status, only one – the agreement on work-related stress – deals less directly with the need to ensure equality and protect against discrimination (ETUC-OSE 2011, p. 52-55).

The figures contained in the same report on the issues dealt with by the European sectoral social dialogue seem less encouraging with a considerably lower number of documents concluded on the issue in question as well as documents with mostly a less binding status than directives or autonomous agreements. This could be defended by the fact that only since 1998 has the European sectoral social dialogue really got off the ground (and considerably increased the

number of sectors covered) and in most of those sectors the social partners have not yet really reached the stage of negotiating framework agreements (ETUC-OSE 2011 p. 56-60).

The above developments represent all in all quite a worthwhile contribution, although it is clear that since the economic crisis of 2008 the contribution clearly diminished in terms of both number and quality of texts.

Developments of labour law on national level

Figure 8.9 Announced and/or adopted changes to IR/CB systems and certain aspects of labour law

	BE	BG	CY	CZ	EE	FI	FR	DE	GR	HU	IT	IE	LV	LT	LU	NL	PL	PT	RO	SK	SI	ES	SE	UK
Reform of Industrial relations and collective bargaining systems (incl. decentralisation of CB)		+			+	+	+		+	+	+	+				+	+	+	+	+		+		
Changes to Individual/Collective Dismissal rules	+		+	+	+				+	+	+		+	+				+	+	+		+		+
Changes to Organisation Of Working Time Legislation	+			+				+	+	+				+	+		+	+	+	+	+	+	+	+
Changes to Rules on Atypical Contracts (including creation of new Types of contract (+) in particular for youth (**))	+++	+++		++	+		++	+	+++	++	+++		+	+	+++	+	+	+	+/+++	+	+	+/+++	+++	+

Source: ETUI own search

Crisis: a pretext for deregulation

The economic crisis of 2007-2011 having already led to significantly less Social Dialogue texts being issued and to a deterioration in their quality, might, in addition, damage the role and contribution of the European social dialogue (ESD) in ensuring more equality, non-discrimination and social cohesion. Several recent reports indicate that in these times of crisis rights at work are under serious and constant threat throughout Europe (e.g. Tajzman et al. 2011, Clauwaert 2011). Nor is this the case only in countries hardest hit by the crisis and faced with drastic social reforms imposed by IMF, ECB and EU Troika (like Greece, Ireland and Portugal); it is happening also in other countries where governments invoke crisis as a pretext to introduce piecemeal deregulatory measures or even complete overhauls of labour codes designed to achieve the same deregulatory effect. In respect of any of several key issues covered by the European social dialogue, it is possible to cite numerous reforms in several countries regarding atypical contracts/work (fixed-term, part-time and temporary agency work) designed to make labour markets more flexible by introducing

legislation to extend the maximum length of fixed-term contracts or the permissible number of contract renewals. Even worse, and leading to even more inequality and less security, is the introduction in several countries, such as Greece, Spain or the Czech Republic, of so-called 'new types of contract', almost all of which are, of course, temporary in nature, with even less protection for the workers concerned than for those working under 'normal atypical contracts', and are often directed at specific groups – e.g. young people – already finding it difficult to enter, progress and remain on the labour market (see Chapter 2). Equally negative in character are measures that simply offer exemption for small businesses from (new) employment legislation for a certain period of time (e.g. UK). In addition, these drastic labour law reforms are invariably accompanied by equally intrusive and downwards reforms of social security and assistance protection as well as wages and wage-setting mechanisms, thereby increasing inequality and diminishing social cohesion even further. Finally, and this is possibly the most harmful factor in relation to the (European) social dialogue, is that these labour law reforms often go hand in hand with fundamental changes to industrial relations structures and processes by, for instance, decentralising collective bargaining as far as possible to the company level (e.g. Italy, Greece, Portugal, Spain,

Romania, etc.), allowing, via this lower-level bargaining, a worsening of provisions offered by higher-level collective agreements or even statutory legislation; or by simply abolishing (e.g. Hungary) or seriously curtailing the role and impact of tripartite social dialogue institutions (e.g. Romania) or denying traditions of social dialogue (Belgium). Such steps will also have serious consequences for the European social dialogue as there is a correlation between the impact and success of the ESD and that of the national social dialogue – yet another conclusion to be drawn from the joint European social partners' evaluation of the ESD and its instruments during 2011 (ETUC et al. 2011). Fortunately, at least on the trade union side, the ETUC-OSE study revealed also that almost 95% of the ETUC member unions having responded to the evaluation survey consider that the European social dialogue, whatever its shortcomings, remains very important and in need of strengthening. What is more, as Figure 8.8 shows, next to the two (surprising) top issues of working time and information and consultation as matters for European social dialogue, between 53% and 58% of respondents judged five other topics to be 'very important', namely, atypical work, non-discrimination, the integration of migrant workers, the social consequences of restructuring, and gender equality.

Conclusions

No fair society without trade unions and worker representation

Contrary to stereotypes, and to a neo-liberal bias against trade unions and worker representation institutions which amounts to the claim that their activities serve to exacerbate inequality, research findings prove just the opposite, namely that trade unions have an equalising effect on wage inequality (Baccaro 2008; Hayter and Weinbert 2011). The increased pressure and further growing inequality observed over the last decade generally (OECD 2008) as well as in the wake of the crisis in particular (OECD 2011a) confirms the need for strong trade unions. As demonstrated in this chapter, the latter foster high collective bargaining coverage and redistribution policies, thereby contributing to more equal societies by tackling diverging pay levels and status. At the same time, on the company level, worker participation and union action, e.g. at board level, contribute to narrowing the wage gap between the rank-and-file and the top 1% of the population. Organising precarious and non-standard workers and extending collective bargaining coverage would definitively be a step towards greater equality. And yet, current trends go in the opposite direction with deregulatory policies fostering the flexibilisation of national labour law without offering much in the way of security to considerable (and growing) ranks of the population vulnerable to various forms of inequality. Insofar as unions offer a road to more equitable and socially sustainable integration, not only do attempts to erode collective bargaining institutions (Hayter et al. 2011) represent the wanton destruction of existing assets, but they even run counter to official policy goals as defined under the Europe 2020 Strategy. This policy programme assigns no role to unions, ESD or worker information, consultation and participation bodies under

the ‘European platform against poverty’ flagship initiative (see also ETUC and ETUI 2011: 85 ff).

Besides wage disparity and imbalance, the fight for equality is an abiding feature of social dialogue and worker representation in struggling against any discrimination based on sex, age or disability. Almost half of EWC members reported inequality to be an issue on their agenda while the most recent European framework agreement relates to “inclusive labour markets” (2010). It is true that the existing legal frameworks for employee involvement on the company level do not highlight or offer special measures designed to step up efforts to redress inequality; nonetheless, such efforts should be agreed more often as a field of competence for worker representatives. Innovative tools in the form of Transnational Company Agreements and International Framework Agreements targeting all forms of inequality and discrimination would seem to open up a new set of opportunities for both worker representatives and unions. Last but not least, non-discrimination should also be tackled from the inside. While there is a greater proportion of women among board-level employee representatives, there is room for progress as regards the gender composition of EWCs. Without greater awareness of and attention to this problem on the part of both worker representatives and managements, little progress will be achievable.

A further contradiction emerges as a result of these trends, namely, the lack of congruence between formally acknowledged fundamental rights to information, consultation and participation in the company (European Charter of Fundamental Rights) and the inequality of their application in practice. Hasty and incomplete, displaying evident disregard for preambles, and seemingly designed to transpose the absolute minima of EU directives, national implementation acts create divergent national standards of rights that, by virtue of their recognised fundamental character, are meant to be universal and equally applicable to any human being in any member state. This fate has befallen all the European directives regarded as foundations of common

information, consultation and participation rights: the original EWC directive 94/45/EC; the directive complementing the European Company statute 2001/86/EC; the framework information and consultation directive 2002/14/EC; and the recently adopted EWC recast directive 2009/38/EC (the transposition of which has not yet been completed by all member states). The necessary adjustments, which should have been applied during the transposition process, have too often turned into omissions and amendments that run counter to the original spirit of these directives as defined in their preambles. In contrast with the otherwise rather limited role assigned to European social dialogue in the whole construction and policy agenda of EU2020 (see ETUC and ETUI 2011: 86–92), the EU 2020 Jobs and Skills Communication promises, among other things, a review of the part-time and fixed-term work directives (European Commission 2010c). The European Commission work programme 2012 thus appears ambitious. For 2013 it provides for two consultations of the European social partners, one of them on the review of the equal pay directive (European Commission 2011c: 28). Similarly, the new work programme 2012–2014 of the European social partners (under negotiation at the time of writing) is likely to entail initiatives in the area of reviews of existing instruments and on issues like equality. In the light of the context and developments described above, the European social partners, and in particular the union side, will have to remain extremely vigilant to ensure that their past contribution to ensuring equality is not undermined by unjustified deregulatory trends at both European and national level.